THE HON'BLE SRI JUSTICE N.V. RAMANA

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Writ Petition No. 5140 of 2001

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Dated:16.03.2006

Between:

T. Madava Rao, E-78509, Driver, S/o Venakaiah, resident of Avanigadda, Krishna District.

..... PETITIONER

AND

The Labour Court, rep. by its Presiding Officer, Guntur and others.

.....RESPONDENTS

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THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 5140 of 2001

O r d e r:

This writ petition is filed seeking to quash the award passed by respondent No.1-Labour Court, Guntur, in I.D. No. 204 of 1998, dated 21.07.2000 in so far as not reinstating the petitioner into service with continuity of service and back wages and consequently direct respondent No.2 to extend the benefit of continuity of service and back wages.

The petitioner was appointed as driver in the respondent-Corporation in the year 1978. On 23.01.1998, the Bus bearing
No. AP 10Z 1439 driven by him met with an accident with a lorry
No. AAE 6555 in between Kanchikacharla and Keesara Villages on the route Vijayawada-Jaggaiahpet at about 7.00 hours, resulting in the death of lorry driver and causing injuries to 11 passengers in the bus and also causing damage to both

the vehicles. Thereupon, a suspension order-cum-charge sheet was issued to the petitioner on 03.02.1998. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 25.04.1998 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 12.05.1998, the respondents ordered his removal. Assailing the order of removal, the petitioner preferred an appeal before the Deputy Chief Traffic Manager and the same was dismissed by order dated 30.06.1998. Thereupon, the petitioner raised an industrial dispute in I.D. No. 204 of 1998, and the Labour Court, vide the award impugned in the writ petition, directed the respondent-Corporation to reinstate the petitioner into service as a fresh candidate without back-wages and without continuity of service. It is this portion of award, not reinstating the petitioner into service with continuity of service and back-wages, is the subject matter of challenge in this writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that the petitioner was never involved in any accident case through out his service and he worked without any remark, and the misconduct alleged against the petitioner is erroneous. He submits that the Labour Court failed to see that the Enquiry Officer, without considering the passengers statements, who stated that there was no fault on the part of the petitioner, came to the conclusion that the charges were proved against the petitioner. In fact the accident had taken place due to the rash and negligent driving on the part of the lorry driver, who died on the spot. He submits that the Labour Court, having held that there is no negligence or rashness of driving on the part of the petitioner, and also having noticed that the petitioner was acquitted by the criminal court in C.D. No. 39 of 1998 for the charges under Section 304-A IPC arising out of the same incident, ought to have set aside the order of removal and awarded continuity of service with back wages. The charges leveled against the petitioner are concocted one, hence denial of reinstatement of the petitioner with continuity of service and back wages is disproportionate to the misconduct alleged. He submits that the impugned award is against the principles of natural justice and not at all justifiable, and as such, prayed that the Corporation be directed to reinstate

the petitioner into service with continuity of service and back wages.

The respondents filed counter. Learned Standing Counsel for the Corporation reiterated the counter averments and supported the impugned award stating that there is no infirmity or illegality warranting interference of this Court. Hence, he prays to dismiss the writ petition.

Even though the learned counsel for the petitioner made an attempt to re-appreciate the evidence, the parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai,** the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. In the departmental enquiry, the Enquiry Officer, on consideration of the statement of the petitioner and the evidence of the Conductor and passengers, who were traveling in the bus on the date of incident, found that there is negligence and lack of anticipation on the part of the petitioner in driving the bus on the date of accident, and accordingly held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, observed that there is negligence and lack of anticipation on the part of the petitioner, but there is no rashness in driving the bus. Therefore, the Labour Court, while observing that the punishment of removal of the petitioner from service is too harsh, and in order to give one more opportunity to the petitioner, directed the Corporation to reinstate the petitioner into service as a fresh candidate without back wages and without continuity of service. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service and back wages, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered fresh appointment.

The further contention of the petitioner is that the Labour Court, having noticed that the petitioner was acquitted by the criminal court in C.D. No. 39 of 1998 for the charges under Section 304-A IPC for the same incident, ought to have set aside the removal and awarded back wages with continuity of service. I am unable to accept the said contention. A perusal of the Labour Court award clearly shows that the petitioner has not produced the copy of the criminal court judgment before the Labour Court and as per the contention of the Law Officer of the respondent-Corporation the petitioner was acquitted in criminal case on benefit of doubt and it is not a clean acquittal. Further, mere acquittal of the petitioner by the Criminal Court does not automatically give him the right to be reinstated into the service. Before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the Criminal Court.

The award passed by the Labour Court is a discretionary one and such an order cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, and more so when the petitioner failed to point out any illegality, infirmity or perversity committed by the Labour Court in denying the reinstatement of the petitioner with continuity of service and back wages and directing the Corporation to appoint him as Driver afresh in the Corporation, in exercise of its discretionary power.

In the above view of the matter, I am not inclined to accept the contentions urged by the learned counsel for the petitioner in support of the writ petition that the punishment imposed against the petitioner is disproportionate to the misconduct alleged.

At this stage, learned counsel for the petitioner submits that the respondent-Corporation issued circulars directing the employees, who are removed from service on account of their involvement in accidents, and who were subsequently acquitted by the Criminal Court, to make an application for reconsideration of their cases for reinstatement into service, and therefore, he may be permitted to approach the respondent-Corporation for

re-consideration of the case of the petitioner for reinstatement into service in the light

of the said circulars.

The petitioner is at liberty to approach the respondent-Corporation for reconsideration of his case for reinstatement into service in the light of the existing circulars, if any, and in such an event, the respondent-Corporation shall consider the case of the petitioner and pass appropriate orders in accordance with law.

Subject to above observation, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 16.03.2006

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